



DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice provides information regarding FHWA's finding that it is appropriate to grant a Buy America waiver to the Golden Gate Bridge, Highway & Transportation District (District) for procurement of foreign iron and steel components for the maintenance traveler system, which is needed to allow continued inspections and routine maintenance operations after the Golden Gate Bridge Physical Suicide Deterrent System Project (Project) is constructed. The non-domestic parts include: (i) electric motors; (ii) speed reducers; (iii) wheel chocks; (iv) a chain stopper; (v) rail clamps with hydraulic power units; (vi) pneumatic brakes; (vii) air compressors; (viii) gas cylinder stands; (ix) bearings (of various types specified in the request); (x) electric cabinet switches and handles; (xi) electrical cabinet shafts; (xii) grounding shoes; and (xiii) scissor lifts.

DATES: The effective date of the waiver is [INSERT DATE ONE DAY AFTER PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Brian Hogge, FHWA Office of Infrastructure, 202-366-1562, or via e-mail at Brian.Hogge@dot.gov. For legal questions, please contact Mr. Patrick C. Smith, FHWA Office of the Chief Counsel, 202-366-1345, or via e-mail at Patrick.C.Smith@dot.gov. Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the Federal Register's home page at: www.FederalRegister.gov and the Government Publishing Office's database at: www.GovInfo.gov.

Background

FHWA's Buy America regulation in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not produced in the United States in sufficient and reasonably available quantities. This notice provides information regarding FHWA's finding that it is appropriate to grant the District a Buy America waiver for procurement of foreign iron and steel components for the maintenance traveler system, which is needed to allow continued inspections and routine maintenance operations after the Project is constructed. The non-domestic parts include: (i) electric motors; (ii) speed reducers; (iii) wheel chocks; (iv) a chain stopper; (v) rail clamps with hydraulic power units; (vi) pneumatic brakes; (vii) air compressors; (viii) gas cylinder stands; (ix) bearings (of various types specified in the request); (x) electric cabinet switches and handles; (xi) electrical cabinet shafts; (xii) grounding shoes; and (xiii) scissor lifts.

Background on the Project: On average, 30 people die from suicide at the Golden Gate Bridge each year. Hundreds more are stopped by the District, the California Highway Patrol, or other intervention. The District determined that a physical barrier was needed to stop suicides from the bridge. The Project, Federal Aid Project No. BHLS-6003(051), involves the construction of a horizontal stainless-steel net supported

by steel net supports for the full length of the bridge, except for a tall vertical railing installed in one location. The horizontal steel net system uses all American steel. The Project also includes the replacement of the bridge maintenance travelers with new travelers because the installation of the net will block the movement of the existing travelers. In this context, a “traveler” means a moveable inspection and maintenance platform, which travels on steel rails and trolley beams and is designed to provide access to the bridge. A new replacement traveler access system is necessary to allow continued inspections and routine maintenance operations after the Suicide Deterrent System is constructed. Some of the traveler equipment is not available with the required Buy America certification because it is not manufactured in America or manufactured in America with some non-domestic parts.

The contract for the Project also encompasses the Golden Gate Bridge Wind Retrofit Project, Federal Aid Project No. BHLS-6003(052). The current construction contract amount for both projects is approximately \$142.1 million (with \$132.6 million for the Suicide Deterrent System Project and \$9.5 million for the Wind Retrofit Project). The estimated value of the components under the requested waiver is approximately \$2.6 million (or less than two percent of the total contract amount). The construction contract specifies that the Project is partially funded with Federal funds and that the FHWA Buy America provisions apply. For the Suicide Deterrent System Project, approximately 65 percent of the total Project cost is Federal, 4 percent is from the State, and 31 percent is local. Under 23 U.S.C. 313(g), FHWA’s Buy America requirement applies to the entire scope of the project, as defined in the NEPA document, when Federal funds are used in any part of the project regardless of whether Federal funds are used in the actual component that is subject to the waiver.

The traveler system is a “contractor-designed” element of this low-bid construction contract. As such, the fact that some of the requisite traveler equipment is

not available with Buy America certifications was not identified until after the contract was awarded and the contractor completed the traveler design. Specifically, the new travelers will be propelled by electric drive systems that include some manufactured mechanical and electrical control components that are not available with the Buy America certification. The travelers must also be equipped with electric scissor lifts that are similarly not available with the Buy America certification.

Background on Waiver Request: The District originally submitted a Buy America waiver request letter to FHWA on June 24, 2020. Prior to requesting a waiver, the District unsuccessfully attempted to identify domestic manufacturers for these products. The District reported to FHWA in the waiver request letter that the District, its contractor, and consultants contacted numerous manufacturers and distributors to identify products that complied with Buy America but were not successful in locating any domestic manufacturers or fabricators of the relevant products. Attachment 1 to the request letter provided a record of the District's efforts. The waiver request included the following non-domestic parts: (i) electric motors; (ii) speed reducers; (iii) wheel chocks; (iv) a chain stopper; (v) rail clamps with hydraulic power units; (vi) pneumatic brakes; (vii) air compressors; (viii) gas cylinder stands; (ix) bearings (of various types specified in the request); (x) electric cabinet switches and handles; (xi) electrical cabinet shafts; (xii) grounding shoes; and (xiii) scissor lifts. Attachment 1 to the request letter provided further information on these parts.

In accordance with the Consolidated Appropriations Act, 2021 (Pub. L. 116-260), FHWA published a notice seeking comment on whether a waiver was appropriate on its Website, <https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=157>, on September 27, 2021.

The FHWA received 14 comments in response to the publication. Eight commenters opposed the waiver, two supported it, and four of the comments documented

the District's efforts to follow-up with one of the commenters opposing the waiver.

Seven of the comments opposing the waiver did not offer any specific information on the availability of compliant products, nor did they suggest specific, additional actions that the District could take to maximize its use of goods, products, and materials produced in the United States. One commenter opposing the waiver indicated that he believed the parts were available from domestic suppliers but also did not name a specific manufacturer. This comment was submitted on September 28, 2021, and invited the District to contact the commenter for additional information on his statement. On October 4, 2021, the District responded to this commenter on the Website requesting the names of United States manufacturers able to provide the relevant parts. On October 13, 2021, the District e-mailed this commenter at the e-mail address he used to submit the comment asking the same. On October 25, 2021, the District posted a new comment to the Website explaining that it had received no reply, either by e-mail or phone, to its questions for this commenter. Thus, the District did not receive any new information indicating that the subject parts could be produced by domestic manufacturers from any of the commenters opposing the waiver.

Although the District did not identify compliant components for the maintenance travelers, it provided information to FHWA supporting its waiver request, including information:

- Supporting the necessity of these specific maintenance travelers for allowing continued access to the bridge for performing inspections and maintenance operations after the suicide prevention nets are installed;
- Documenting efforts to locate compliant manufactured products;
- Demonstrating that alternative designs were infeasible; and
- Describing the effects of denying the request.

Although ultimately unsuccessful, the District made substantial efforts to find suitable Buy America compliant components for the maintenance travelers.

Timing and Need for a Waiver. The District maintains that approval of a Buy America waiver for the relevant components of the maintenance travelers is now critical to maintain the schedule of ongoing construction on the Project. The District explained in early 2021 that it was already at a juncture where delays in the approval of the Buy America waiver may delay completion of construction with commensurate additional payments to the contractor.

Executive Order 14005. Executive Order 14005, “Ensuring the Future is Made in All of America by All of America’s Workers,” provides that agencies should, consistent with applicable law, maximize the use of goods, products, and materials produced in, and services offered in, the United States. 86 FR 7475 (Jan. 28, 2021). Based on the information contained in the waiver request from the District and the lack of responsive comments following publication of a notice seeking comment on September 28, 2021, regarding available domestic manufacturers for the subject parts, FHWA concludes that issuing a waiver is consistent with Executive Order 14005.

Finding and Request for Comments

Based on all the information available to the Agency, FHWA concludes that there are no Buy America-compliant relevant components for the maintenance travelers for the Project, specifically including: (i) electric motors; (ii) speed reducers; (iii) wheel chocks; (iv) a chain stopper; (v) rail clamps with hydraulic power units; (vi) pneumatic brakes; (vii) air compressors; (viii) gas cylinder stands; (ix) bearings (of various types specified in the request); (x) electric cabinet switches and handles; (xi) electrical cabinet shafts; (xii) grounding shoes; and (xiii) scissor lifts. This finding only includes components identified in the waiver request and supporting documents included on FHWA’s Website.

The District and its contractors and subcontractors involved in the procurement of the relevant components are reminded of the need to comply with the Cargo Preference Act in 46 CFR part 38, if applicable.

In accordance with the provisions of Section 117 of the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110-244, 122 stat. 1572), FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. FHWA invites public comment on this finding for an additional five (5) days following the effective date of the finding. Comments may be submitted to FHWA's Website via the link provided to the waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110-244; Pub. L. 116-260; 23 CFR 635.410.

Stephanie Pollack,
Deputy Administrator,
Federal Highway Administration.

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